

In The United States Patent Office

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Appellant respectfully requests the Board of Appeals strike the Examiner's  
August 21, 2009 *Revised Second Supplemental Examiner's Answer* because it fails  
to comply with the Board's March 31, 2009 *Order*.

## FACTUAL BACKGROUND

On December 3, 2007, the Examiner filed a *Second Supplemental Examiner's Answer*. The Board, however, found that the *Second Supplemental Answer* raises new grounds of rejection without properly identifying them as such, and fails to properly provide the Technology Center Director's signature approving

of those newly-raised grounds. Thus, on March 31, 2009, the Board remanded the paper to the Examiner, and Ordered her to correct these defects.

On August 21, 2009, the Examiner filed a *Revised Second Supplemental Examiner's Answer*. Troublingly, however, the Examiner refuses to comply with the Board's explicit Order to correct its defects.

5 For example, the August 21, 2009 Answer (at page 4) says that the only "Evidence Relied Upon" is eight patent documents:

**(8) Evidence Relied Upon**

Wheelock et al., US 5,833,994.

Wheelock et al., US 6,140,063.

Babish et al., WO 96/17605.

Wheelock et al., WO 98/30213.

Nanduri et al., US 6,410,590.

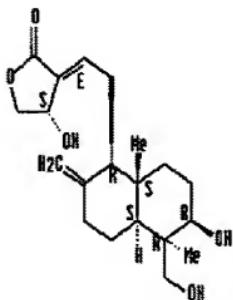
Nanduri et al., US 6,486,196.

Nanduri et al., US 2002/0016324.

Babish et al., US 2002/0077350.

Two pages later (on page 6), the Examiner argues that a document she refers to as  
10 "STN REGISTRY," renders the appealed claims anticipated. She says:

reference repeats the name "Andrographolide" over and over, then the structure of "Andrographolide" should be the same as the structure from the  
STN REGISTRY



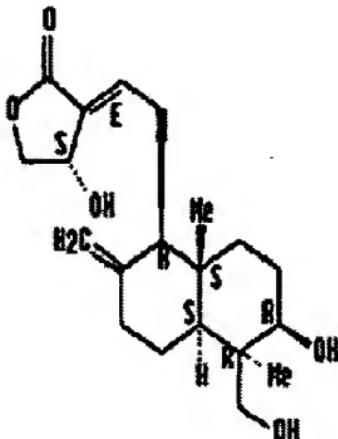
This is problematic because STN REGISTRY is evidence not included in the list of "Evidence Relied Upon." To the contrary, STN REGISTRY is *not even of record*: the Examiner refuses to provide a copy of it to the Board nor to me.

5 This refusal is troubling because the Examiner tries to use this newly-raised evidence to contradict the evidence which is of record. For example, the Examiner concedes that Wheelock WO98/30213 and Babisch US2002/0077350 teach chemical structures different from the claimed compound. The Examiner, however, argues that based on STN REGISTRY, Wheelock and Babisch's teachings are "a typographical error" (see e.g., page 14) and thus should be disregarded.

10 In addition to relying on new evidence, the Examiner presents new factual allegations without bothering to allege any evidentiary support. For example, the

Examiner (at page 15) argues that the claimed compound has a chemical structure different from what the inventor says it is:

It is examiner's position that the examiner agrees that this compound 3-[2-[decahydro-6-hydroxy-5-(hydroxymethyl)-5,8a-dimethyl-2-methylene-1-naphthalenyl]ethylidene]-dihydro-4-hydroxy-2(3h)-furanone has structure



, which is also known as

"Andrographolide".

#### ARGUMENT

5 The Examiner's latest *Answer* raises new factual allegations unsupported by the evidence of record, and relies on these newly-raised factual allegations to support newly-raised grounds for rejection. The Examiner, however, *flatly refuses to comply with the Board's explicit Order* to identify these new grounds of

rejection as such. Further, the Examiner flatly refuses to even obtain the Director's signature approving of her latest paper.

5 **RELIEF REQUESTED**

Appellant respectfully asks the Board to strike the Examiner's August 21, 2009 *Revised Second Supplemental Examiner's Answer* because it willfully fails to comply with the Board's March 31, 2009 *Order*.

Respectfully submitted on behalf of the Applicant by its attorneys,  
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SD:HP Ingredients/10,516,500 Rule 41.3 Petition (Oct. 2009)